

**REPORT - PLANNING COMMISSION MEETING
November 6, 2003**

Project Name and Number: Zoning Text Amendment for Geological Reports (PLN2004-00069)

Applicant: City of Fremont

Proposal: To consider a City-initiated Zoning Text Amendment (ZTA) to provide clear authority for the City Engineer and Building Official to require geological reports for proposed development in Fremont hillside areas; the rescission of the Mission Peak General Plan Amendment, the withdrawal of the Mission Peak Zoning Overlay (PLN2001-00363); and the repeal of the Mission Peak Landslide Development Policy.

Recommended Action: Recommend to the City Council: (i) Zoning Text Amendment (PLN2004-00069); (ii) rescission of the Mission Peak General Plan Amendment and withdrawal of the Mission Peak Zoning Overlay (PLN2001-00363); and (iii) repeal of the Mission Peak Landslide Development Policy.

Location: City wide. Generally areas east of Highway 680 and east of Mission Boulevard.

Environmental Review: A Negative Declaration has been prepared and circulated for this project.

General Plan: Hill Face Open Space, Open Space, Institutional Open Space, Toe of Hill, Ridgeline and Residential designations including but not limited to 0.25-1, 0.5-1.5 and 2-3.5 dwelling units per acre.

Zoning: Open Space (OS), Hillside Combining District (H-I), Planned Development (PD), and Single Family Residential R-1-80, and R-1-160.

Existing Land Use: The predominant uses within the hillside areas include residential, grazing, and public and private open space uses.

Public Hearing Notice: Public hearing notification is applicable. A Display Ad and Public Hearing Notice were delivered to The Argus on October 20, 2003, to be published by October 23, 2003. In addition, more than 20 letters and copies of the draft negative declaration were mailed as a courtesy to interested parties prior to October 23, 2003.

Executive Summary:

1. Adopt Zoning Text Amendment (PLN2004-00069) to clarify the authority of the City Engineer and Building Official to require geological reports for development proposed in the Open Space, Hillside Combining, Planned Districts (which were formerly H-I and O-S), and R-1-80 and R-1-160 (Single Family Residential Districts when there is information about risk from earth movement;
2. Rescind the Mission Peak General Plan Amendment and withdraw the Mission Peak Zoning Overlay (PLN2001-00363); and
3. Repeal the Mission Peak Landslide Development Policy.

Background and Previous Actions:

LANDSLIDE. In March of 1998, the Mission Peak landslide occurred. Approximately 27 million cubic yards of earth were involved in this massive landslide, stretching a mile long, a quarter mile wide, and over one hundred feet deep. Emergency flood control channel work was undertaken by the City to prevent further damage.

GEOLITH REPORT. Immediately following the landslide, the City hired a geological engineering firm, Geolith Consultants ("Geolith"), to prepare a report regarding the landslide. Based on surface and below ground earth characteristics, Geolith studied the area from Ohlone College to south of Stanford Avenue, east of Mission Boulevard (the "Study Area"). The technical information, conclusions, and Study Area of the Geolith report were reviewed by the United States Geological Survey (USGS), the California Geologic Survey (CGS) and Cotton Shires Associates ("CSA", the City's peer review geological consultant).

Based on the conclusions of the Geolith report, properties in the Study Area which were determined to be susceptible to landslide or earth movement were identified as being located in: (1) Landslide Zone 1 – least susceptible; (2) Landslide Zone 2 – marginally susceptible; Landslide Zone 3 – generally susceptible; and Landslide Zone 4 – most susceptible. The City then sent notices to owners of property located within Zones 3 and 4 to advise them of the results of the study.

MISSION PEAK LANDSLIDE AREA DEVELOPMENT POLICY. On February 22, 2000, the City Council adopted the Mission Peak Landslide Area Development Policy. (See enclosure.) In the interest of preserving the environment, as well as the health and safety of residents, this policy established procedures for the issuance of permits for the development or improvement of property within the Study Area. This policy generally included the requirement that projects proposing to develop in Landslide Zone 3 – generally susceptible and Landslide Zone 4 – most susceptible provide a geological study to address landslide and earth movement concerns. Such geological study was subject to the requirement for a peer review.

GENERAL PLAN AMENDMENT AND ZONING OVERLAY. On February 12, 2002, the City Council adopted Resolution No. 9749 which amended the General Plan Health & Safety Chapter and Land Use Diagram by establishing a Landslide (L) Overlay district. Portions of property generally located in the Study Area and Mission San Jose Planning Area were placed within the Landslide (L) Overlay district. The City Council deferred action on the accompanying zoning text amendment and zoning map amendment after the first reading.

NOTICES REGARDING LANDSLIDE OR EARTH MOVEMENT FROM PUBLIC LAND ONTO PRIVATE LAND. [Note: The following paragraph is provided for the Commission's information only because it may be discussed by members of the public; actual policy direction on this item is in the purview of the City Council.] Based upon the Geolith report, the City became aware of the potential that a landslide or earth movement from City-owned public land could damage adjacent privately owned land and create liability. The State Legislature, in recognizing the interest served by public ownership of undeveloped open space, adopted a law which provides public agencies immunity from liability from landslide or earth movement, provided that it occurs on publicly owned unimproved property and the public agency gives private property owners notice of such risk when the public agency becomes aware of the risk. (See Government Code §831.25.) To provide the "notice" required by the State statute, the City considered: (a) recording a notice against the title of private properties at risk; (b) adopting a local disclosure ordinance which would require persons selling private property within a designated area to provide notice to buyers of the risk; or (c) semi-annual letters to owners of private property at risk. Staff will recommend that the Council select option (c) semi-annual letters.

PUBLIC RESPONSE. As a result of the above described City actions, members of the public responded with the concerns generally summarized as follows:

- a) Validity of the Geolith Report
- b) Fairness (the Mission Peak area is subject to different treatment than the rest of the hill area)
- c) Request that City undertake the repair of the landslide
- d) Administrative and procedural items

Staff's responses to these concerns are briefly summarized as follows:

- a) City staff has worked with Cotton Shires Associates (CSA) to update the Geolith report, as was suggested to be done in five years by the report itself. Staff is of the professional opinion that the Geolith report, as updated by CSA, is a valid and reliable document.

Other concerns related to the Geolith Report include opinions that the City should not rely on the Geolith Report, but should instead rely on the United States Geological Survey (USGS) maps for the entire Fremont area. In reviewing these USGS maps, staff determined that their age and large, general scale did not provide as much reliable and specific information as the Geolith Report. As noted below, staff proposes to use federal USGS and State maps, as well as the Geolith Report and other information, when appropriate to determine if a geological report is needed to study a proposed development project.

b) For the reasons set forth in the Project Analysis section, below, the proposed Zoning Text Amendment, the rescission of the Mission Peak General Plan Amendment, the withdrawal of the Mission Peak Zoning Overlay, and the repeal of the Mission Peak Landslide Development Policy effectively treats hillside areas with geological concerns in a similar manner.

c) City staff have reviewed available Federal and State grants, and no such funding sources, nor local sources, are available to carry-out a repair of the landslide. It is also not likely to be technically feasible and the cost versus benefit of doing the repair work has been questioned by geological professionals.

d) Concerns expressed by interested citizens relating to administrative and procedural matters are within the purview of the City Council. (E.g. records retention, notices.) Recommendations will be presented to Council at their meeting on December 9, 2003.

Project Description: Based on the public dialogue at Community meetings, input from affected residents, and additional information the City received from CSA, staff believes that it can best balance the concerns of affected residents, public interest in the health and safety of the entire Fremont community, and City interests, with the current proposal to:

1. Adopt a Zoning Text Amendment (PLN2004-00069) to clarify the authority of the City Engineer and Building Official to require geological reports for development proposed in the Open Space District, Hillside Combining District, Planned Districts (which were formerly H-I and O-S), R-1-80 and R-1-160 (Single Family Residential Districts) districts when there is information suggesting risk from earth movement;
2. Rescind the Mission Peak General Plan Amendment and withdraw the Mission Peak Zoning Overlay (PLN2001-00363); and
3. Repeal the Mission Peak Landslide Development Policy.

Project Analysis:

1. Zoning Text Amendment (PLN2004-00069). Exhibit "A", attached hereto, provides the complete language of the proposed zoning text amendment (ZTA).

The ZTA amends the Hillside Combining (H-I) district, Open Space (O-S) district, Planned Development (PD) districts which were formerly within H-I or O-S zoning districts (see enclosed map), the R-1 Single-Family Residence District and the Building Code, to give clear authority to the City Engineer and Building Official to require geological reports for proposed developments, where any of the following information suggests that such a geological report would be appropriate to address health and safety concerns:

- Fremont General Plan
 - This would include the Slope Instability figure, Regional Seismic Map, Groundshaking and Liquefaction Potential figure, and Seismic Zones figure from the Health & Safety Section
- An on-site soils and/or geological investigation
 - This would include geological reports from an original underlying subdivision, a site specific geological investigation for the proposed development, or a report from an adjacent property which addressed soils issues for the area of the proposed project
- A survey by the United States Geological Survey
- A survey by the California Geologic Survey

- The State of California is in the process of releasing State Seismic Hazard Zone maps covering the entire State.
- A report available to the City
 - This would include the Geolith report and other reports available to the City, whether commissioned by the City or privately commissioned
- Observation of physical conditions
 - Staff is aware of landslides and earth movements which have occurred in the hill areas, but are not shown on any map or detailed in any report

The ZTA is needed because under the current Fremont Municipal Code, the City Engineer can only require a geological report when a subdivision, or grading in excess of 100 cubic yards, is proposed. In the case of a custom home being proposed for a pre-existing lot, if the project does not involve 100 cubic yards of grading, the City Engineer cannot require a geological report, even if the proposed home is within a subsequently determined landslide area. Under the current Building Code, the Building Official may only require a soils classification report for certain development projects. Thus, if an applicant proposes to build an accessory structure in a landslide area, the Building Official may not currently require a geological report to ensure safety. With the City Council's adoption of the Mission Peak Landslide Development Policy, the City Engineer was given authority to require geological reports for developments proposed within the limited Study Area of the Geolith report. However, that authority does not extend to other hillside areas which may be at risk from landslide or earth movement.

The proposed ZTA provides clear authority for the City Engineer and the Building Official to require geological reports throughout the hillside areas when information, studies, observation, or other data is available to recommend such course of action. The scope of the geological report would be based on the proposed development and the site conditions. Because the City does not have a geological engineer on staff, the ZTA provides that the City Engineer or Building Official may require that the geological report submitted by the applicant be peer reviewed. The City is in the process of reviewing proposals from geological peer review firms, and proposes to have one to two firms available for such work.

The ZTA effectively treats the entire Fremont hillside area in the same manner, and does not focus exclusively on the Mission Peak landslide area. The broad areas covered by the ZTA allow recently released California State Seismic Hazard Zone maps to be used most effectively to address potential health and safety concerns.

To implement the ZTA, the City Engineer and Building Official will be developing an administrative regulation to create a clear process for the circumstances under which a geological report would be required, the scope of such report, and other procedural issues.

[Note: The following paragraph is provided for the Commission's information only because it may be discussed by members of the public; actual policy direction on records retention is in the purview of the City Council.] As information is received, staff will supplement the existing City internal database (Geographic Information System (GIS) which contains zoning, assessor, owner, development entitlement, and other information) to track properties which may be subject to the requirement for a geological report. This internal database will reflect staff's observations of physical conditions, the State Seismic Hazard Zone maps (which are being released on a gradual basis), the Geolith report (as recently updated by CSA), and other reports, maps and data available to City staff. Updates will occur as information becomes available and as staff time permits. This is an internal City database used by staff to process development applications and respond to questions. The GIS database is not accessible by the public from remote locations, and the information can be viewed by the public at City offices only.

2. Rescission of the Mission Peak General Plan Amendment and Withdrawal of the Mission Peak Zoning Overlay (PLN2001-00363).

With the adoption of the proposed ZTA, concerns regarding the safety of development in the Mission Peak landslide area and entire Fremont hillside areas will be addressed. Thus, there is no need to have specific General Plan zoning designations or amendments speaking only to the Mission Peak landslide area. Therefore, staff recommends

rescission of the Mission Peak General Plan Amendment and the withdrawal of the Mission Peak Zoning Overlay (PLN2001-00363) in conjunction with the adoption of the ZTA.

3. Repeal of the Mission Peak Landslide Development Policy.

With the adoption of the proposed ZTA, concerns regarding the safety of development, verified through geological studies, in the Mission Peak landslide area will be addressed. Thus, there is no need to have the specific Mission Peak Landslide Development Policy. Therefore, staff recommends rescission of the Mission Peak Landslide Development Policy in conjunction with the adoption of the ZTA.

General Plan Conformance: The proposed Zoning Text Amendment (ZTA) implements the following General Plan Goals and Policies:

- Policy LU 6.8: Early assessment of environmental constraints and resources should be conducted and submitted with applications for development. Early consultation with the City regarding the implications of the environmental assessment for proposed development is recommended. Issues to be addressed include geology (e.g. seismicity, soils, slope), biology (e.g. wetlands and riparian zones, landmark trees), mineral resources and visual sensitivity. These resources and constraints are roughly identified in the Natural Resources and Health and Safety Chapters of this plan.
- Goal NR 6: Urban development consistent with soil conditions to safeguard health and property.
- Policy NR 6.1.2: Prior to building construction, sufficient analysis of soils shall be conducted by a qualified engineer or geologist to ensure appropriate foundation and building design.
- Goal HS 1: Minimum feasible risk to the community from land instability and other non-seismic induced geological hazards.
- Goal HS 2: Minimum feasible risk to residents and property due to seismic activity.
- Policy HS 1.1.1: Control development in areas subject to geological hazards and land instability.
- Policy HS 1.1.2: Require proposed new development in areas of potential geological hazard identified on Figure 10-1, Figure 10-3, and Figure 10-5 of this General Plan to evaluate geological hazards and sufficiently mitigate hazards through site planning, appropriate construction techniques, building design and engineering.

The aforementioned goals and policies support the proposed Zoning Text Amendment and other components of the project.

Environmental Analysis: An Initial Study and Draft Negative Declaration have been prepared and circulated for this project and are included as an enclosure.

A finding is proposed that this project would not have a significant effect on the environment. Accordingly, a draft Negative Declaration has been prepared for consideration by the Planning Commission.

The initial study conducted for the project has evaluated the potential for this project to cause an adverse effect -- either individually or cumulatively -- on wildlife resources. There is no evidence the proposed project would have any potential for adverse effect on wildlife resources. Based on this finding, a Certificate of Fee Exemption will be submitted with the Notice of Determination after project approval, as required by Public Resources Code section 21089 (see attachment to draft Negative Declaration). The Certificate of Fee Exemption allows the project to be exempted from the review fee and environmental review by the California Department of Fish and Game.

Enclosures: Exhibit "A" Zoning Text Amendment

Informational: Map of Affected Zoning Districts
Mission Peak Landslide Development Policy
Initial Study and Draft Negative Declaration
Mission Peak Landslide Property Owner Perspective
10/25/01 Planning Commission (PC) Report
10/25/01 PC Revised Agenda
10/25/01 PC Minutes
12/11/01 City Council (CC) Agenda
01/15/02 CC Report
01/15/02 CC Minutes
01/24/02 PC Report
01/24/02 PC Minutes
02/12/02 CC Report
02/12/02 CC Minutes
05/07/02 CC Report
05/07/02 CC Minutes

Exhibits: Exhibit "A" Zoning Text Amendment

Recommended Actions:

1. Hold public hearing.
2. Recommend the City Council find the initial study conducted for PLN2004-00069 has evaluated the potential impacts for this project that could cause an adverse effect -- either individually or cumulatively -- on wildlife resources. There is no evidence the proposed project would have any potential for adverse effect on wildlife resources.
3. Recommend the City Council adopt the draft Negative Declaration with accompanying Certificate of Fee Exemption and find it reflects the independent judgement of the City of Fremont, and finding there is no substantial evidence that the project, as mitigated, will have a significant effect on the environment.
4. Find PLN2004-00069, a Zoning Text Amendment, is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the goals and policies set forth in the General Plan's Land Use, Natural Resources and Health & Safety Chapters, as enumerated within the staff report.
5. Find the public necessity, convenience and general welfare require the adoption of Zoning Text Amendment because the Zoning Text Amendment (PLN2004-00069) implements the City's General Plan.
6. Recommend PLN2004-00069 to the City Council in conformance with Exhibit "A" (Zoning Text Amendment).
7. Recommend to the City Council the rescission of the Mission Peak General Plan Amendment, the withdrawal of the Mission Peak Zoning Overlay (PLN2001-00363), and the repeal of the Mission Peak Landslide Development Policy.